

MT LEGISLATIVE HISTORY

Chapter 490 1991

Bill H 336 S _____

Original bill & hist. ☒ C

H. Committee on Labor & Employment Relations S. Committee on Labor & Employment Relations

Hearing Date(s) Feb 05 ☒ C

Hearing Date(s) Mar 07 ☒ C

Feb 12 ☒ C

Mar 12 ☒ C

_____ ☐ C

Mar 23 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Feb 13 ☒ C

Mar 14 ☒ C

Mar 26 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE FINAL STATUS

HB 337

WITH SAME BOUNDARIES TO UNIFY

1/22	INTRODUCED		
1/22	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/22	FIRST READING		
1/30	HEARING		
2/21	COMMITTEE REPORT--BILL PASSED AS AMENDED		
3/05	2ND READING PASSED	93	4
3/07	3RD READING PASSED	91	4
	TRANSMITTED TO SENATE		
3/08	FIRST READING		
3/08	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/22	HEARING		
3/25	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	49	0
4/01	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	95	1
4/09	3RD READING AMENDMENTS CONCURRED	98	0
4/18	SIGNED BY SPEAKER		
4/19	SIGNED BY PRESIDENT		
4/19	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 555		
	EFFECTIVE DATE: 7/01/91		

HB 336 INTRODUCED BY SIMPKINS

REVISE THE STATE WAGE PROTECTION LAWS;
EMPLOYER TO PAY FINE WHEN WAGES NOT PAID
BY REQUEST OF DEPARTMENT OF LABOR & INDUSTRY

1/22	INTRODUCED		
1/22	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/22	FISCAL NOTE REQUESTED		
1/22	FIRST READING		
1/28	FISCAL NOTE RECEIVED		
1/29	FISCAL NOTE PRINTED		
2/05	HEARING		
2/13	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/16	2ND READING PASSED AS AMENDED	88	10
2/19	3RD READING PASSED	93	6
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/07	HEARING		
3/15	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/16	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/28	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	49	0
4/01	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	94	2
4/09	3RD READING AMENDMENTS CONCURRED	94	4
4/16	SIGNED BY SPEAKER		
4/16	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 490		
	EFFECTIVE DATE: 7/01/91		

HB 337 INTRODUCED BY J. BROWN

APPROPRIATION TO DEPARTMENT OF HIGHWAYS
FOR EXCEPTED EMPLOYEE SALARIES

1/22	INTRODUCED		
1/22	REFERRED TO STATE ADMINISTRATION		

HOUSE BILL NO. 336

INTRODUCED BY SIMPKINS
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE HOUSE

JANUARY 22, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 13, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 14, 1991	PRINTING REPORT.
FEBRUARY 16, 1991	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 18, 1991	ENGROSSING REPORT.
FEBRUARY 19, 1991	THIRD READING, PASSED. AYES, 93; NOES, 6.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 15, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 16, 1991	ON MOTION, CONSIDERATION PASSED UNTIL THE 58TH LEGISLATIVE DAY.
	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO THE COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
MARCH 26, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1991	SECOND READING, CONCURRED IN.
APRIL 1, 1991	THIRD READING, CONCURRED IN.

AYES, 49; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1991

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 9, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 336
 2 INTRODUCED BY Stephens
 3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
 6 DEPARTMENT OF LABOR AND INDUSTRY TO RETAIN A PENALTY
 7 ASSESSED AN EMPLOYER FOR FAILURE TO PAY WAGES DUE;
 8 AUTHORIZING THE DEPARTMENT TO ENTER A DEFAULT ORDER IN A
 9 WAGE CLAIM AND TO ENFORCE THE DEFAULT ORDER; ESTABLISHING A
 10 PRIORITY FOR BOND PAYMENT UNDER THE RESTAURANT, BAR, AND
 11 TAVERN WAGE PROTECTION ACT; PROHIBITING BOND PAYMENT TO THE
 12 STATE COMPENSATION MUTUAL INSURANCE FUND; AMENDING SECTIONS
 13 39-3-206, 39-3-212, 39-3-216, 39-3-604, AND 39-3-605, MCA;
 14 AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."
 15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 **Section 1.** Section 39-3-206, MCA, is amended to read:

18 "39-3-206. Penalty for failure to pay wages at times
 19 specified in law. Any An employer, as ~~such-employer-is~~
 20 defined in this part, who fails to pay any of his employees
 21 as provided in this part or violates any other provision of
 22 this part ~~shall-be~~ is guilty of a misdemeanor. A penalty
 23 ~~shall must~~ also be assessed against and paid by ~~such the~~
 24 employer ~~and-become-due-such--employee--as--follows:--a--sum~~
 25 ~~equivalent--to--the--fixed-amount-of~~ to the department in an

1 amount equal to 5% of the wages due and unpaid shall--be
 2 assessed for each day, except Sundays and legal holidays,
 3 ~~upon-which-such~~ that the employer's failure to pay continues
 4 after the day ~~upon-which-such~~ wages were due, ~~except--that~~
 5 ~~such~~ However, the failure ~~shall--not--be--deemed~~ is not
 6 considered to continue more than 20 days after the date ~~such~~
 7 the wages were due."

8 **Section 2.** Section 39-3-212, MCA, is amended to read:

9 "39-3-212. Court enforcement of administrative
 10 decision. A department default order, a decision of the
 11 hearings officer, if the decision is not appealed to the
 12 board, or a decision of the board, if judicial review is not
 13 sought, may be enforced by application by the commissioner
 14 to a district court for an order or judgment enforcing the
 15 decision. The commissioner shall apply to the district court
 16 where the employer has its principal place of business or in
 17 the first judicial district of the state. A proceeding under
 18 this section is not a review of the validity of the
 19 administrative decision."

20 **Section 3.** Section 39-3-216, MCA, is amended to read:

21 "39-3-216. Hearing. (1) If the department determines
 22 that a wage claim exists and the employer does not appeal
 23 the determination, the department may enter a default order
 24 against the employer for the amount of wages due and owing.
 25 The department may enforce the default order pursuant to

1 39-3-212.

2 ~~{1}~~(2) When the department determines that a wage claim
3 exists and if it fails to settle the claim with the parties,
4 it shall cause the matter to be brought to a hearing before
5 a department hearings officer. The hearing must be conducted
6 according to contested case procedures under Title 2,
7 chapter 4, part 6, except that the hearings officer is not
8 bound by statutory or common-law rules of evidence.

9 ~~{2}~~(3) The decision of the hearings officer is final
10 unless further review is initiated pursuant to 39-3-217
11 within 15 days after the decision is mailed to each party's
12 last-known address. The period may be extended by the board
13 for good cause."

14 **Section 4.** Section 39-3-604, MCA, is amended to read:

15 "39-3-604. Bond to be filed -- bond requirements --
16 payment -- exception. (1) Except as provided in 39-3-605 and
17 subsection (4) ~~of--this--section~~, a person operating a
18 business as a restaurant, bar, or tavern is required to file
19 a bond equal to at least double the amount of the projected
20 semimonthly payroll with the commissioner. The bond ~~shall at~~
21 all-times must be kept in full force and effect, and any
22 cancellation or revocation of the bond or withdrawal of the
23 sureties from the bond is grounds for enjoining the
24 operation of business, as provided for in 39-3-607, until a
25 new bond of like tenure and effect is filed and approved.

1 (2) The bond required by subsection (1) ~~of-this-section~~
2 must be filed with the commissioner. The state of Montana
3 must be named as the obligee, with good and sufficient
4 sureties to be approved by the attorney general.

5 (3) The bond must ~~be-conditioned--to~~ assure that the
6 employees who perform labor or other personal services are
7 guaranteed their wages ~~in-the-event~~ if the person ceases
8 operation of the business for any reason and is unable to
9 pay the wages due and owing the employees and to must assure
10 payment due the department as a result of payroll taxes.

11 (4) The bond must first be used to pay wages due and
12 owing employees, then to pay payroll taxes due the
13 department. The bond may not be used to pay an amount due
14 the state compensation mutual insurance fund established in
15 39-71-2313.

16 ~~{4}~~(5) Except as provided in 39-3-605(2), this section
17 does not apply to any person who has operated the same
18 restaurant, bar, or tavern continuously since October 1,
19 1980."

20 **Section 5.** Section 39-3-605, MCA, is amended to read:

21 "39-3-605. Waiver of bond -- new or additional bond --
22 exemption. (1) After 3 years of compliance with this part,
23 the commissioner shall waive the provisions of 39-3-604 for
24 any person showing compliance with the applicable provisions
25 of the Fair Labor Standards Act and all the applicable laws

1 administered by the department.

2 (2) Notwithstanding 39-3-604~~(4)~~(5) and subsection (1)
3 of this section, the commissioner may require a person
4 operating a restaurant, bar, or tavern, including a person
5 who has been in business since October 1, 1980, or for over
6 3 years, to file a new bond or a bond of a greater amount
7 than double the semimonthly payroll whenever the person
8 operating a restaurant, bar, or tavern defaults on the
9 payment of wages, payroll taxes, or workers' compensation
10 premiums.

11 (3) A person who owns and operates a restaurant, bar,
12 or tavern is exempt from the provisions of 39-3-604 to the
13 extent that 39-3-604 would otherwise require filing of a
14 bond based on the payroll and wages attributable to members
15 of the immediate family of the person who owns and operates
16 the restaurant, bar, or tavern."

17 NEW SECTION. **Section 6.** Effective date. [This act] is
18 effective July 1, 1991.

19 NEW SECTION. **Section 7.** Applicability. [This act]
20 applies to all wage claims filed with the department of
21 labor and industry on or after July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0336, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill authorizing the Department of Labor and Industry to retain a penalty assessed an employer for failure to pay wages due and to enter and enforce a default order in a wage claim; establishing a priority for bond payment under the Restaurant, Bar and Tavern Wage Protection Act; and prohibiting bond payment to the State Compensation Mutual Insurance Fund.

ASSUMPTIONS:

1. HB0336 would have no fiscal impact on the State Fund and would not increase or decrease operating costs for wage claim activities conducted by the Department of Labor and Industry.
2. Revenues generated from penalties authorized under HB0336 would be highly variable. The amount of penalty revenue that could have been collected under HB0336 would have been \$18,456 in FY89 and \$63,557 in FY90.
3. Penalty revenues would be deposited to the account from which wage claim activities are funded.

FISCAL IMPACT:Expenditures:

No impact.

Revenues:

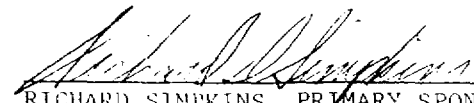
An increase in penalty revenues would occur. If consistent with the experience of FY89-FY90, revenues would increase by \$81,000 over the biennium. The additional penalty revenues would offset UI administrative tax revenues used to support wage claim activities.

TECHNICAL NOTE:

Section 4, subsections (3) and (4), refer to payroll taxes due to the Department of Labor and Industry. As of July 1, 1991, the employer payroll tax will be collected by the Department of Revenue.


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

1-26-91
DATE


RICHARD SIMPKINS, PRIMARY SPONSOR

1-29-91
DATE

Fiscal Note for HB0336, as introduced.

HB 336

REP. BECK asked Mr. O'Leary if the Department is conducting and taping telephone interviews, what procedure insures the quality of the tape or to keep people from talking at once. Mr. O'Leary said a year ago when the Department got the Workers' Compensation cases, it obtained state-of-the-art telephone equipment. The Department hadn't had the type of criticisms from the Courts as Judge Rearden talked about.

REP. DRISCOLL asked Mr. O'Leary if UI appeals are already done by phone if both parties agree to it, will that change if this bill does not pass. Mr. O'Leary said a pre-conference is held and issues are resolved, and the parties are informed that there will be a telephone conference. At that time their permission is not sought. REP. DRISCOLL said he received a letter that said to come to Helena or he would be called. Mr. O'Leary said he was given an option.

CHAIR SQUIRES asked Judge Rearden if he opposed the bill with the amendments. Judge Rearden said he didn't fully oppose the bill but opposed bad tapes and transcripts. Removing Workers' Compensation eliminates the problem because they have a high percentage of appeals.

Closing by Sponsor:

REP. RICE stated that \$6 million could be lost if UI hearings are not completed under certain time schedules. The only way the Department of Labor can meet the federal mandates is to have the hearings telephonically. Presently, the meetings are being held by telephone, but there is no specific authority given under the law. If the amendments are adopted to strike Workers' Compensation, the Department will be forced to have court reporters and transcripts at every Workers' Compensation hearing. That will have a big impact on the Department's budget.

HEARING ON HB 336

Presentation and Opening Statement by Sponsor:

REP. RICHARD SIMPKINS, House District 39, Great Falls, said HB 336 is the collection of wages in a labor dispute between an employer and an employee. Presently, the law permits the Department of Labor to levy a penalty against the employer at 5 percent per day, not to exceed 20 days, which is 100 percent. This can be a hinderance in settling a negotiated claim. If the employee waits, he could get the 100 percent penalty because the penalty used to be given to the employee. The state would receive no compensation for the negotiation phase of the process. This bill would give a different type of compensation to the employee and compensate the state for having to intervene in obtaining the back wages. It would provide a better incentive for a rapid settlement between the employee and employer. The Department would collect the 5 percent penalty per day if it chooses to do so. He presented amendments. EXHIBIT 5

Ms. McClure stated a correction to the amendments. The third amendment should say "Page 5" instead of "Page 3."

Proponents' Testimony:

Mike Micone, Commissioner, Department of Labor and Industry, presented written testimony. EXHIBIT 6

Opponents' Testimony:

Don Judge, Executive Secretary, AFL-CIO, presented written testimony. EXHIBIT 7

Phil Campbell, Montana Education Association, stated opposition. If the Department needs money, it should amend the bill to recover attorney fees which are allowed under other sections of the law. If an employee has a wage claim, he can go to court and receive the penalty and attorney fees. The penalties help settle the claims instead of prolonging them.

Gene Fenderson, Montana State Building and Construction Trades Union, stated he agreed with the testimony just given. The penalties should be tripled instead of doubled.

Questions From Committee Members:

REP. HOFFMAN asked Ms. McClure, in reference to the ability of the Department to take a default judgment, does the party against whom the default is taken have a remedy in the event of excusable neglect. Ms. McClure said she didn't know, but the Department may know.

REP. THOMAS asked Mr. Judge if he would change his position on the bill if the proposed amendment would allow interest to be charged on the back wages due. Mr. Judge said if the interest would be given to the Department and the penalty would be given to the employees, that would be okay. There would be additional income. The employee who has waited for 20 days would be entitled under current law to 100 percent of the lost wages. If the bill is adopted with the amendments, the employee would only be entitled to the New York prime interest plus 2 percent, which would be a smaller amount of money. That wouldn't change the major objection. REP. THOMAS asked if he would want the penalty to go to the employee as it is now. Mr. Judge said yes. REP. THOMAS asked if he would want the interest to go to the Department. Mr. Judge said he didn't have an objection to the Department collecting the interest; he was just defending what the employee has coming to him now.

REP. DRISCOLL asked Mr. Micone how many times the penalty was collected at 100 percent. Mr. Micone said that the law mandates to charge 5 percent per day. In every instance a case will go longer than 20 days, so the 100 percent penalty is collected in every occasion. The Department does collect the penalty; the law

mandates it.

Closing by Sponsor:

REP. SIMPKINS stated previous testimony said that almost every case exceeds 20 days. Up to 20 days is fine, but beyond 20 days there is no incentive to settle the case. Under this proposal, the employer pays the employee the percentage, and he has to pay the penalty to the Department. There would be an ongoing percentage being charged against those wages until the case was settled. The whole purpose of this bill is to get the money due the employee as soon as possible. Beyond 20 days the law doesn't have any bargaining power. The employee would be given compensation at a rate higher than most people can earn on their money. In addition, he stated to Ms. McClure where it says, "the rate may not exceed" the word "annualized" may need to be inserted.

CHAIR SQUIRES asked Mr. Micone to clarify the technical note in the fiscal note Section 4, Subsections 3 and 4, referring to the payroll taxes due to the Department of Labor. As of July 1, 1991, the employer payroll tax would be collected by the Department of Revenue. Mr. Micone said it refers to the payroll tax to pay out the unfunded liability in Workers' Compensation. That function had been transferred to the Department of Revenue effective January 1, 1992.

Ms. McClure asked Mr. Micone if it should say payroll taxes due to the Department of Revenue instead of Department of Labor in Subsections 3 and 4. Mr. Micone said yes.

HEARING ON HB 342

Presentation and Opening Statement by Sponsor:

REP. WANZENRIED, House District 7, Kalispell, stated that HB 342 deals with the construction trade industry, home building, and independent contractors. It would remove the exemptions that members of the Home Building Construction Industry are currently entitled to qualify for an exemption from coverage under Workers' Compensation. It would require anybody involved in the industry to carry Workers' Compensation coverage. Page 3 lists the occupations that would be required to carry Workers' Compensation coverage. These occupations are the most hazardous in the Workers' Compensation field. The independent contractor status that is allotted to any occupation complicates Workers' Compensation. Under current law, an independent contractor is a person engaged as an independently established trade, occupation, profession, or business. The independent contractor has been and will continue to be free of control or direction over the performance of the services under the contract. In the absence of a contract, the degree of control is the important variable. For example, a home builder may serve as a general contractor and subcontracts the work out. As soon as there is an injury, that

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 2/5/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

Amendments to House Bill No. 336
First Reading Copy

Requested by Representative Simpkins
For the House Committee on Labor and Employee Relations

Prepared by Eddy McClure
February 6, 1991

1. Title, line 7.

Following: "DUE;"

Insert: "REQUIRING AN EMPLOYER TO PAY THE EMPLOYEE ANNUALIZED
INTEREST ON UNPAID WAGES;"

2. Page 1, line 23.

Following: "~~shall~~"

Strike: "must"

Insert: "may"

3. Page 2, line 7.

Following: "due."

Insert: "The employer shall also pay the employee annualized
interest on the unpaid wages from the date the wages were
due. The interest must be calculated by the department and
compounded annually, but the annualized rate may not exceed
2 percentage points a year above the prime rate of major New
York banks on the date of settlement."

4. Page 5, lines 9 and 10.

Following: "wages" on line 9

Strike: ", "

Insert: "or"

Following: "taxes"

Strike: remainder of line 9 through "premiums" on line 10

DEPARTMENT OF LABOR AND INDUSTRY

COMMISSIONER'S OFFICE



STAN STEPHENS, GOVERNOR

P.O. BOX 1

STATE OF MONTANA

(406) 444-3555

HELENA, MONTANA 596

February 5, 1991

TESTIMONY BEFORE THE HOUSE LABOR COMMITTEE ON HOUSE BILL 336

BY COMMISSIONER MIKE MICONE, THE DEPARTMENT OF LABOR AND
INDUSTRY

Madam Chair and members of the committee.

HB 336 is before you at the request of the Department. The purpose for this legislation is threefold:

1. A technical correction of a provision in a legislative enactment in 1989 that allows the department to enter into a default order against an employer for wages due and the determination is not appealed by the employer. This correction is in Section 3 of the bill.
2. The second purpose is to clarify the bond provision as outlined in Section 4. Presently, the operator of a restaurant or bar is required to file a bond with the Department equal to double the amount of the projected semimonthly payroll. The purpose of the bond was to assure employees were guaranteed their wages. If the business is to cease operations, it is our intention that the proceeds of the bond will first be used to pay wages owing to employees; remaining proceeds would pay payroll taxes due and owing. None of the proceeds would be used to pay workers' compensation premiums.
3. The third provision of the bill (Section 1) is a change that will enable the Department to bring about a more timely resolution to contested wage cases. Presently the Department is required to impose a penalty equal to 5% per day of the wages due and unpaid, not to exceed 100%. This penalty becomes part of the settlement to the employee. There is no leeway in the law for the Department to settle cases.

Our proposal is to allow the Department to impose a penalty up to 100% and the proceeds collected would revert to the Department for the operations of the legal unit. We agree with the amendment offered by the sponsor that gives accumulative interest to the claimant separate and apart from the penalty imposed.

The Department presently is acting on behalf of the claimants receiving no fees for the services performed. In addition, if the claimant refuses to settle for the amount of wages owed and insists on the penalty, Department expenses expand accordingly by requiring our legal staff to obtain depositions or pay travel expenses to Helena for a trial.

A classic example is a wage claim case of 93 workers against Centel filed in 1984. While the exact damages based on the number of workers and hours is still disputed, the Department would like to settle the case for what we believe is owed. We believe settlement would avoid costly discovery and extended trial. Several of the claimants have demanded the penalty thus protracting our efforts to settle.

Many times our hearing officers attempt to negotiate settlements prior to the hearing. Employers are opposed to paying any penalty and the employee, upon hearing of the 100% penalty, refuse to settle for the wages owed.

We believe that providing for interest to be paid to the claimant and allowing the Department flexibility will go a long way toward resolving cases and get the aggrieved workers their wages in a more timely manner.

We encourage passage of HB336.

5 June 1989

Department of Labor & Inc.
State of Montana
Commissioners Office
PO Box 1728
Helena, Montana

RF: Wage Claim against
Wilco-Center

596

In 1983 we installed several Public Business Exchanges and wired many buildings including the State Capitol Complex and three major state Universities in Billings, Bozeman, and Missoula, Mont. We worked long hard hours cutting over the new phone system. During the tenure of our employment in 1983, we obtained copies of our union labor Contract and noted several discrepancies in the contract including prevailing wage and the per diem in the contract. On discovering we were being paid properly we filed a petition six years ago and are now understand the issue is going to Court Oct 16, 1989. We the undersigned feel that we should have due wages and compensations that should have been

My name
is not
on the
list
of
signers

215/91

HB 336

Michael J Duffin Po Box 302

ELDRIDGE, ILL 62027

John P. Ford

RR I Box 118

John Wyrick

Hillview ILL 62050

527 Porter ST. Whitehall ILL.
62092

Rick Lawson

Box 1436

Hillview, IL
62050

Robert D. Cox

Box 21

Hillview, ILL.

Marilyn R. Cox

Box 21

Hillview, ILL.

Ralph D. Cox

Box 132

Hillview, IL

Robert E. Hunt

Box 64

Hillview, IL.

Matthew J. Innes

Box 27

ELDRIDGE, ILL 62027

EXHIBIT 7
DATE 2/5/91
HB 336



DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-17

Testimony of Don Judge before the House Labor and Employment Relations
Committee, February 5, 1991

Madam Chair and members of the committee, for the record my name is Don Judge and I am here today to testify on behalf of the Montana State AFL-CIO in opposition to House Bill 336.

As has been described to you, this bill would amend current law to provide that fines assessed against an employer for failure to pay wages in accordance with the time frame specified in law, would be paid to the Department of Labor rather than to the employee effected.

For employees who may be forced to wait for several months to collect back wages, this could mean the difference in ability to pay bills long overdue, to cover medical costs long overdue, or to simply furnish food for their table. Although we appreciate that there are costs involved with the Department of Labor in investigation and collection of such wages, we also believe that the moral obligation of the State is to do so within the regular funding sources available. Currently the fund used to support wage claim activities is the Unemployment Insurance Administrative Tax Revenue. This seem to us to be an appropriate financing arrangement for this activity.

Madam Chair, members of the committee, this is a simple bill which may create significant problems for employees who are already facing difficulties as a result of their employer's wage default. It is our opinion that House Bill 336 is a bad idea and should be given a "do not pass" recommendation by this committee.

Thank you.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor & Employment Relations

COMMITTEE

BILL NO. 336

DATE 2/5/91

SPONSOR(S) Rep. Richard Simpkins

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Don Judge	MT STATE AFL-CIO		X
Robert K Murphy, Wetmore	International Brotherhood Electrical Workers		X
Jim Stucky Towson MD	Operating Eng 400		X
MARK LANDOLFI	AFSCME		X
Phil Campbell	MEA		X
Mike Truitt	DLI	X	
Ernie Funder	Wt St Bly Trailer	X	X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

the railroad. The resolution should urge Congress to remove the FELA program and proceed with a federal Workers' Compensation program that has language to allow the no-fault system to be used.

REP. WHALEN said railroad workers shouldn't be placed in the Workers' Compensation program, which has politics played with it regularly. There was previous discussion about what takes place with regard to FELA claims. A letter to the CEO of Union Pacific Corporation by a UTU local business agent says less than 1 percent of all FELA cases are decided by juries, attorneys are hired in only 15 percent of the cases, and 85 percent of all cases are handled between railroad claims agents and the injured employees. After Workers' Compensation changes were adopted in 1987, employers no longer had incentive to have safety programs that cost money. In many cases the cost/benefit analysis was cheaper to injure an employee because of the amount paid in Workers' Compensation than to institute the costly safety programs. There are extensive safety programs in the railroad industry because it costs the employer money when there is an injury. That system should stay in place.

REP. JOHNSON said he was going to vote against HJR 13. He didn't hear any testimony saying that FELA wasn't going to be here. The Legislature shouldn't try to put in a House Joint Resolution expressing the opposition to the railroad corporation's participation in Montana Workers' Compensation. The Legislature shouldn't try to exclude anybody.

REP. WANZENRIED said that railroad workers are excluded from the system right now. An affirmative decision would have to be made to include them in Workers' Compensation.

Vote: HJR 13 DO PASS. Motion carried 14 to 3. EXHIBIT 8

EXECUTIVE ACTION ON HB 336

Ms. McClure presented amendments. EXHIBIT 9

Motion: REP. DRISCOLL MOVED HB 336 DO PASS

Motion: REP. DRISCOLL moved to amend HB 336.

Discussion:

REP. DRISCOLL said the amendments say that the Department shall collect the unpaid wages and at least 2 percent interest over New York prime and no more than 100 percent. This gives the Department room to negotiate and may be able to get the cases settled quicker. The worker would always get the interest and possibly 100 percent penalty.

Vote: The motion to amend carried unanimously.

Motion/Vote: REPS ? made a substitute motion that HB 336 DO PASS AS AMENDED. Motion carried 16 to 1 with REP. O'KEEFE voting no.

EXECUTIVE ACTION ON HB 342

Ms. McClure presented written testimony explaining previous laws about cosmetologist and barber services, amendments, and a gray bill. EXHIBIT 10

Motion/Vote: REP. BENEDICT moved to amend HB 342. Motion carried unanimously of the members present.

Motion/Vote: REP. LEE MOVED HB 342 DO PASS AS AMENDED. Motion carried unanimously of the members present.

HEARING ON HB 531

Presentation and Opening Statement by Sponsor:

REP. JOHN PHILLIPS, House District 33, Great Falls, stated he sponsored HB 531 on behalf of Montanans For A Drug-Free Society. It is an act adopting the Workforce Drug Abuse Prevention Act requiring recipients of certain state grants and contracts to implement employee drug abuse prevention programs. There are already similar federal regulations, and it has been recommended that states adopt them also.

Proponents' Testimony:

Wade Rea, Montanans For A Drug-Free Society, presented and summarized a Montana Poll handout from the Gallup Organization. EXHIBIT 11. Drugs contribute to loss of revenue to employers, loss of productivity which causes cutbacks in employment and revenue, and decrease tax revenues. Employees are supporting a drug-free workplace. There is no place for drugs in society or in the workforce.

Steve Browning, IBM, distributed a copy of the Drug-Free Workplace Act of 1988, which is a federal law currently in effect. EXHIBIT 12. This law governs any contract or grant by the Federal Government in excess of \$50,000. It requires the employers, who are the grantees, to certify that they have a drug-free workplace. HB 531 is a similar law and also requires the grants to be subject to the maintenance of the drug-free workplace. Failure to do so will revoke the grant.

Opponents' Testimony:

Dan Edwards, International Representative, Oil, Chemical & Atomic Workers Union, presented written testimony. EXHIBIT 13

Jim Beck, Chief Counsel, Department of Highways, stated that HB 531 would present serious problems to the Department of Highways.

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE 2/2/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS		✓	
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

Amendments to House Bill No. 336
First Reading Copy

Requested by Representative Simpkins
For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 6, 1991

1. Title, lines 5 and 6.
Strike: "THE" on line 5 through "RETAIN" on line 6
Insert: "PAYMENT TO AN EMPLOYEE OF"
2. Title, line 7.
Following: "DUE;"
Insert: "REQUIRING AN EMPLOYER TO PAY THE EMPLOYEE ANNUALIZED
INTEREST ON UNPAID WAGES;"
3. Page 1, line 19.
Following: "Any"
Insert: "(1)"
4. Page 1, line 23.
Following: "~~shall~~"
Strike: "must"
Insert: "may"
5. Page 1, line 25.
Following: "the"
Strike: "department"
Insert: "employee"
6. Page 2, line 1.
Following: "amount"
Strike: "equal to 5%"
Insert: "not to exceed 100%"
7. Page 2, line 4.
Following: "due"
Insert: ", but not less than the wages due plus interest payment
required in subsection (2)"
8. Page 2, lines 5 through 7.
Following: "~~such~~" on line 5
Strike: remainder of line 5 through "due" on line 7
Insert: "(2) The employer shall also pay the employee annualized
interest on the unpaid wages from the date the wages were
due. The interest must be calculated by the department and
compounded annually, but the annualized rate may not exceed
2 percentage points a year above the prime rate of major New
York banks on the date of settlement."
9. Page 5, lines 9 and 10.
Following: "wages" on line 9

Strike: ","

Insert: "or"

Following: "taxes"

Strike: remainder of line 9 through "premiums" on line 10

4. 11
2. 13 11
1 D R

HOUSE STANDING COMMITTEE REPORT

February 13, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Labor report that House Bill 336 (first reading copy -- white) do pass as amended.

Signed: Carolyn Squires, Chairman

And, that such amendments read:

1. Title, lines 5 and 6.

Strike: "THE" on line 5 through "RETAIN" on line 6

Insert: "PAYMENT TO AN EMPLOYEE OF"

2. Title, line 7.

Following: "DUE;"

Insert: "REQUIRING AN EMPLOYER TO PAY THE EMPLOYEE ANNUALIZED
INTEREST ON UNPAID WAGES;"

3. Page 1, line 19.

Following: "Any"

Insert: "(1)"

4. Page 1, line 23.

Following: "~~shall~~"

Strike: "must"

Insert: "may"

5. Page 1, line 25.

Following: "the"

Strike: "department"

Insert: "employee"

6. Page 2, line 1.

Following: "amount"

Strike: "equal to 5%"

Insert: "not to exceed 100%"

7. Page 2, line 4.

Following: "due"

Insert: ", but not less than the wages due plus interest payment
required in subsection (2)"

4.41
2.12
108

February 13, 199
Page 2 of

8. Page 2, lines 5 through 7.

Following: "~~such~~" on line 5

Strike: remainder of line 5 through "due" on line 7

Insert: "(2) The employer shall also pay the employee annualize interest on the unpaid wages from the date the wages were due. The interest must be calculated by the department and compounded annually, but the annualized rate may not exceed 2 percentage points a year above the prime rate of major New York banks on the date of settlement."

9. Page 5, lines 9 and 10.

Following: "wages" on line 9

Strike: ", "

Insert: "or"

Following: "taxes"

Strike: remainder of line 9 through "premium" on line 10

Representative Clark deferred the question to Tom Schneider. Mr. Schneider told the Committee all other state employees have the right to grieve through a contract grievance procedure, and ultimately go to binding arbitration. He explained the entire process is determined by the Attorney General. He selects the hearings officer. There were two cases in the last two years, one of which the hearings officer, selected by the Attorney General, recommended a person not be terminated. The Attorney General terminated. The district court did not overrule the Attorney General. They will not overrule unless a specific error is found in the record. The facts are not looked at.

Senator Devlin asked Mr. Schneider about his statement that all other state employees have the right to grieve. He cited the fish and game. Mr. Schneider told the Committee there are statutory procedures for both the Highway Department and the Fish and Game. In both cases, if a procedure is in the contract; the contract procedure is followed, or the statutory procedure is followed at the choosing of the employee. With the Highway Patrol, because the process is defined in statute only; currently without amending the statute, the statutory procedure only can be used.

Closing by Sponsor:

Representative Clark closed on House Bill 232. He told the Committee this bill would not change, and would not interfere with the Attorney General's right to suspend, demote, or discharge. It does not take away his right to appoint a hearings officer. It provides after the Attorney General has made a decision, the Highway Patrol officer will have the right to appeal grievance resolution provision of the collective bargaining agreement.

HEARING ON HOUSE BILL 336

Presentation and Opening Statement by Sponsor:

Representative Dick Simpkins presented House Bill 336 to the Committee. He explained the bill at the request of the Department of Labor and Industry is to clarify procedures in two areas. One in which the DOLI enters a procedure to recover unpaid wages to an employee by an employer; and a priority for bond payments for restaurants, bars, etc. At the present time the law states the department, if it intercedes to recover employee wages, must levy a penalty on the employer at a rate of 5% of the total wages due for a period not to exceed 20 days. He told the Committee this sets up a "deadlock". The employee knows he can receive a 100% penalty and after 20 days, there is no incentive for the employer to settle. The discretion is left to the department with an incentive to both parties to settle as soon as possible. In regards to the default judgement, the

department is allowed to enter a default order to ensure faster settlement. He told the Committee because of a change in workers' compensation, which a mutual fund outside the department, a change has been made. A bond is required by individuals owning taverns, restaurants, bars, etc. The bond will be used to pay wages due employees first, then the payroll taxes due, and no longer used to pay workers' compensation.

Proponents' Testimony:

Mike Micone, Commissioner of the Department of Labor and Industry spoke in support of House Bill 232. He told the Committee the Section the department wishes to address deals with penalty. He explained the law requires a 5% penalty per day be imposed for up to 20 days (equalling 100%). This penalty must go to the claimant. He cited a wage claim case of 93 workers against Centel filed in 1984. While the exact damage is based on the number of workers and hours, the case is still in dispute. The department believes settlement would avoid costly discovery and an extended trial. Several of the claimants have demanded the penalty. He explained the hearings officers attempt to negotiate settlements prior to the hearing. The employers are opposed to paying any penalty; and the employee, upon hearing of the 100% penalty, refused to settle for the wages owed. The process is delayed.

Opponents' Testimony:

Don Judge of the Montana State AFL-CIO spoke in opposition to House Bill 336. He told the Committee they did not aggressively oppose the entire provisions of this legislation in the House. He commented some things about House Bill 336 are very good. The department is given the authority to enter a default order which will speed up to collection of wages in the event the employer fails to respond to the wage claim being filed against him. Mr. Judge told the Committee when employees file wage claims, they file because "they're desperate for that money". He explained if the employee is due those wages; they should receive it as soon as possible. He commented he understood the department's dilemma in not having flexibility in encouraging employers to settle the issue. He stated he disagrees employees wait twenty days for wages due in order to receive a doubling of wages. He suggested rather than allow the department complete discretion in waiving the penalty, the department be allowed a reasonable period of time (first ten days after the wage claim is filed) within which they may elect to waive the penalty; and then the department shall assess the penalty at a rate of 5% per day not to exceed 100%. He explained it would allow the department time and would apply pressure to reticent employers. Mr. Judge suggested amending Page 1, Line 25 by striking the word "may" and reinsert "must"; and to add "no longer than 10 days following filing of the claim assessed against the employer, a penalty of not less than 5% per day not to exceed 100% of the wages due and owing". He told the

Committee the Montana State AFL-CIO opposes the bill in its current form.

Bob Heiser of the United Food and Commercial Workers International Union spoke in opposition to House Bill 336. He told the Committee of his opposition to leaving the penalty up to the discretion of the department. He stated in 20 years he has dealt with many wage claims. No employee has ever "drug his feet trying to get that wage claim settled".

Lars Ericson of the Montana State Council of Carpenters told the Committee no individual has "ever sat in the weeds waiting so they could collect the maximum penalty". He explained these are working people who need their money immediately. He stated he would support the amendments proposed by Don Judge of the Montana State AFL-CIO.

Questions From Committee Members:

Senator Devlin asked Mr. Judge if the Montana State AFL-CIO opposed House Bill 336 in the House. Mr. Judge told the Committee he testified against the bill in the House. He explained the bill as introduced was originally proposed to provide the penalty go to the Department of Labor and nothing was proposed on the interest. In discussion with labor organizations representing individuals involved in wage claims it was decided the legislation did not satisfy the issue even after amendments in the House.

Senator Devlin asked Mike Micone about Mr. Judge's proposed amendments. Mr. Micone told the Committee Mr. Judge had concurred with the amendments from the House. He explained Representative Simpkins offered the amendment for the proposed interest being paid to the claimant. He stated the department has received calls from claimants who have said, "I'm not going to settle that case unless I get the 100% penalty." If the employer is willing to pay the wages and a reasonable interest but will not pay to penalty, and is willing to go to court over it; and the claimant won't settle without the 100% penalty, the department is in a position of not being able to negotiate the case. He told the Committee when organized labor says their members are not "dragging their feet" it may be true. The Centel case has been since 1984 with the department attempting to resolve the case.

Senator Keating asked Mr. Micone if this bill is directed at a certain group of workers. Mr. Micone told the Committee the bill applies to all workers who feel they have not received the wages due and owing. These workers have a right to file a claim.

Senator Keating asked Mr. Micone if numbers of employees are kept as to whether individuals are in bargaining units or not. Mr. Micone told the Committee of the claims filed he could not say how many are from bargaining units and those which do not.

Senator Aklestad asked Representative Simpkins about Page 4 sub (4) in regards to bond payments and workers' compensation. He asked why the payroll "side" is paid and not the premium "side". Representative Simpkins explained the payroll side is under state control; workers' compensation is a mutual insurance company not under the Department of Labor and Industry. Mr. Micone told the Committee the provisions relates to all payroll taxes.

Closing by Sponsor:

Representative Simpkins closed on House Bill 336. He suggested an amendment which would read "at least a minimum of the New York Prime plus 2%". He told the Committee the reason the Department has entered into negotiations to recover wages is because the bargaining unit has failed. He commented the unions are not interested in bargaining. He asked the Committee if they "could turn around and get 100% interest on your money in 20 days, would you wait?" The department is acting as a mediator between the employee and the employer. The mediator needs the "tools to bargain and negotiate an agreement".

HEARING ON HOUSE BILL 342

Presentation and Opening Statement by Sponsor:

Representative Dave Wanzenried presented House Bill 342 to the Committee. The bill would require anyone involved in the construction trades industry to carry workers' compensation. It involves sole proprietors, working members of partnership, corporate officers and dependent members of employees families. Representative Wanzenried was asked to introduce House Bill 342 by the home building industry in Montana. He commented this industry has many injuries. In order to protect all involved it is necessary to require workers' compensation coverage. Currently individuals can claim themselves as independent contractors. An independent contractor by definition under workers' compensation includes two criteria: a) "has been and will continue to be free from control of direction over the performance of the service both under his contract and in fact". (Representative Wanzenried explained the "in fact" is where the problem ensues.) And, b) "is engaged in a independently established trade, occupation or professional business". He commented the problem ensues at the point of injury. He told the Committee the expression: "an employee is an independent contractor who just was injured". In the past individuals wishing to build a home decide to serve as the prime contractor and will sub-contract work out. Because they are not aware of the requirements these individuals do not insure the sub-contractors are covered. A law suit ensues as the result of an injury because in most cases small independent contractors do not carry workers' compensation coverage. The home builder assumes

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/7/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

DATE

3/7/91

COMMITTEE ON

Senate Labor

HB's - 232-336-342-356

HJR 13

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
BERNIE CONNOR	CONNOR MASONRY	342		X
BRAD KALBERER	BTJ HTG	342		X
PON CHANCE	MT. BUILDING IND. ASSN.	342	✓	
DAVE RAYMER	LOG STRUCTURES BY RAYMER	342		X
REY	NORTHWEST ROCKY MOUNT. CONST.	342		X
Shant Whitaker		342		X
Blair D. Ben	Ross Const	342	✓	
Jay D. Duffel	Gifford Refrig. Inc	342		X
ERIK MEIS	West Wind Comm. Service	342		X
Frank Ambrosio	VALLEY PT & GLASS	342	✓	
RICHARD BEAM	BEAM DESIGN & CONST'N.	342	✓	
Suddy Lundstrom	MALTA PIG + HTG	342		✓
Mary Decker	Melba Pig + HTG	342		X
Barbara R. Wolfe	Barbara Wolfe	356		X
Juanita Kijikowski	self	356		X
Dewey Hall	SELF	336		X
FRED SIMPSON	MONTANA RAIL LINE	HJR 13		X
DEWEY HALL	SELF	356	X	
David A. Decker	STEAM BUILDERS	342	X	
Mark Lindsey	Lindsey Const.	342	X	
TOM TILLO	ENTERPRISE FLOORING	342	X	
Leonard Channing	Alpine Electric	342		X
Jim Caras	Mission's Hardware & Carriage	342	X	
James T. Mullar	MONT. RAIL LABOR LEGIS. COUNCIL	HJR-13	X	
John Carlson	MEL. MFG.	356	X	
David Cull	Alpine Home Builders	342	X	

DATE _____

3/7/91 (cont'd)

COMMITTEE ON

Senate Labor

VISITORS' REGISTER

[illegible]

Senator Towe commented "somebody is going to be in court" because Montana requires it must be the same as the Fair Labor Standards Act the tip has to be included even if the tip is excluded some other place. He explained what needs to be clarified is the rate of \$4.25 is the same but all other provisions in 29 USC 206 are not automatic.

Senator Towe suggested an amendment be drafted to address this issue.

EXECUTIVE ACTION ON HOUSE BILL 232

Motion:

Senator Nathe moved House Bill 232 BE CONCURRED IN.

Discussion:

Senator Aklestad stated the individuals (Colonel Griffith) being directly affected spoke in opposition to House Bill 232.

Senator Pipinich pointed out Colonel Griffith had told the Committee he represented both union and non-union and had to "treat them both the same".

Recommendation and Vote:

Nathe motion BE CONCURRED IN CARRIED with Senator Aklestad and Senator Devlin voting NO. Senator Nathe will carry House Bill 232 to the Senate.

EXECUTIVE ACTION ON HOUSE BILL 336

Motion:

Senator Keating moved House Bill 336 BE CONCURRED IN.

After amendments Senator Pipinich moved House Bill 336 BE CONCURRED IN as amended.

Amendments, Discussion, and Votes:

Senator Lynch moved to amend Page 2, Line 15 striking "exceed" and inserting "be less than". Motion CARRIED UNANIMOUSLY.

Senator Blaylock moved to amend Page 1, Line 25 striking "may" and inserting "must". Senator Aklestad pointed out the department asked for latitude in this area. Senator Keating commented the reason "may" was included was to allow for negotiation of settlement. If the law requires a penalty there

would be no negotiation. Motion CARRIED five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe), four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe).

Senator Aklestad told the Committee with the amendments he will vote against House Bill 336 because the department will not be able to negotiate penalties.

Recommendation and Vote:

Pipinich motion BE CONCURRED IN as amended CARRIED with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe), four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, and Senator Nathe).

EXECUTIVE ACTION ON HOUSE BILL 342

Motion:

Senator Keating moved House Bill 342 DO NOT BE CONCURRED IN.

Discussion:

Senator Aklestad told the Committee major contractors should be demanding evidence of workers' compensation coverage from sub-contractors. He commented current statute (37-71-405 MCA), an exemption, should be strengthened because there is abuse. House Bill 342 would be hard on small employers.

Senator Pipinich stated he spoke with four people who told him they were "done" if House Bill 342 passes.

Senator Aklestad pointed out larger employers work in the office more than the smaller employer which would give the larger employer a reduced rate.

Senator Nathe asked if there is a penalty incurred by a general contractor if the sub-contractors are not covered.

Senator Lynch offered a substitute motion to PASS FOR THE DAY on House Bill 342 in order to spend more time looking at the legislation. Motion CARRIED with Senator Aklestad, Senator Devlin, and Senator Keating voting NO.

EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 29

Motion:

Senator Keating moved House Joint Resolution 29 BE CONCURRED

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/12/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 14, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 336 (third reading copy -- blue), respectfully report that House Bill No. 336 be amended and as so amended be concurred in:

1. Page 1, line 25.

Following: "must"

Strike: "HAY"

Insert: "must"

2. Page 2, line 15.

Following: "NOT"

Strike: "EXCEED"

Insert: "be less than"

Signed: Thomas E. Towe

Thomas E. Towe, Vice-Chairman

LB 3/14/91
And. Coord.

SL 3/15 9:30
Sec. of Senate

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chair, on March 23, 1991, at 9:20 a.m.

ROLL CALL

Members Present:

Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Steve Doherty (D)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: NONE.

EXECUTIVE ACTION ON HOUSE BILL 336

Amendments, Discussion, and Votes:

Tom Gomez explained amendments (HB033602.ATG). Senator Pipinich moved amendments above and later withdrew the motion for further amendment.

Senator Keating asked if the sponsor were aware of the amendments. Senator Towe told the Committee the sponsor was not aware of the amendments. He explained the amendments are for the purpose of clarification. He pointed out the intent is not to make the interest part of the penalty. He suggested deleting the reference to interest which would then state the penalty can be up to 100% of the wages; not up to 100% of wages and interest.

Mr. Gomez told the Committee the result would be a clear penalty provision in sub (1), a clear interest provision in sub (2), a clear provision in sub (3) which states none excludes the

obligation of the employer to pay wages due.

Senator Pipinich moved amendments (HB033602.ATG) and delete all underscored language on Page 2, Line 7 and Line 8.

Senator Aklestad offered a substitute motion which delete amendment (4) of HB033602.ATG (Page 1, Line 25 by inserting "may" in place of "must"). He explained this would allow the department latitude in negotiating the penalty.

Senator Towe ruled the Aklestad motion as a request to divide the question.

The Pipinich motion to adopt all but amendment (4) CARRIED UNANIMOUSLY.

The segregated portion of the Pipinich motion (to adopt amendment (4) of HB033602.ATG) CARRIED by a Roll Call Vote with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe); four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, Senator Nathe).

Recommendation and Vote:

Senator Lynch moved House Bill 336 BE CONCURRED IN as amended. Roll Call Vote CARRIED with five (5) YES (Senator Blaylock, Senator Doherty, Senator Lynch, Senator Pipinich, and Senator Towe); four (4) NO (Senator Aklestad, Senator Devlin, Senator Keating, Senator Nathe). Senator Pipinich will carry House Bill 336 on the Senate floor.

EXECUTIVE ACTION ON HOUSE BILL 342

Amendments, Discussion, and Votes:

Senator Towe explained amendments.

Senator Aklestad moved House Bill 342 BE NOT CONCURRED IN.

Senator Blaylock commented this is a "real problem across Montana". If an individual is hurt while working as a sub-contractor a consistent pattern has been set. That individual the goes to court. He stated the main contractor or the owner "get hit". He told the Committee this is not fair. Others are covered by private insurance.

Senator Towe explained the issue raised by Senator Blaylock is addressed in the amendments.

Senator Lynch pointed out the Committee was speaking to the Aklestad motion and not the amendments.

Senator Towe stated that is correct but asked to explain. A

3/23/91

DATE _____
Senate Labor

EX. SESS - HB 141-187-336-342-506 HJR 13

SB 4117

(Please leave prepared statement with Secretary)

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 3/23/91 House Bill No. 336 Time 9:31 Am

NAME	YES	NO
SENATOR AKLESTAD		X
SENATOR BLAYLOCK	X	
SENATOR DEVLIN		X
SENATOR KEATING		X
SENATOR LYNCH	X	
SENATOR MANNING		
SENATOR NATHE		X
SENATOR PIPINICH	X	
SENATOR TOWE	X	
Senator Doherty	X	

Secretary _____

Chairman _____

Motion: Motion To Adopt Segregated
Amend. # 4

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/23/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 26, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 336 (third reading copy -- blue), respectfully report that House Bill No. 336 be amended and as so amended be concurred in:

Strike the Labor and Employment Relations Standing Committee Report dated March 14, 1991 in its entirety and concur in the following amendments:

1. Title, line 5.
Following: "AN ACT"
Strike: "AUTHORIZING"
Insert: "REVISING THE STATE WAGE PROTECTION LAWS; REQUIRING AN EMPLOYER TO PAY A PENALTY TO AN EMPLOYEE"
2. Title, lines 6 and 7.
Following: "RETAIN" on line 6
Strike: remainder of line 6 through "EMPLOYER" on line 7
3. Title, line 15.
Following: "39-3-206,"
Insert: "39-3-208,"
4. Page 1, line 25.
Following: "must"
Strike: "MAY"
Insert: "must"
5. Page 2, lines 7 and 8.
Following: "due"
Strike: remainder of line 7 through "(2)" on line 8
6. Page 2, line 15.
Following: "NOT"
Strike: "EXCEED"
Insert: "be less than"

7. Page 2, line 18.

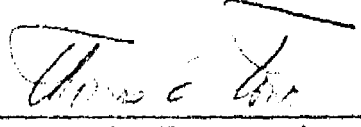
Following: line 17

Insert: "(3) Nothing in this section may be construed to relieve an employer from the requirement to pay an employee the full amount of wages due, including interest, if the employer is found in violation of this part.

Section 2. Section 39-3-208, MCA, is amended to read:

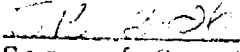
"39-3-208. Contracts in violation of part void. Any contract or agreement made between any person, partnership, or corporation and any party in his or its employ the provisions of which violate, evade, or circumvent this part is unlawful and void, but such the employee may sue to recover his wages earned, together with the 5% penalty and interest specified in 39-3-206 or separately to recover the penalty and interest if the wages have been paid."

Renumber: subsequent sections

Signed, 

Thomas E. Towe, Vice Chairman

 3-26-91
Amd. Coord.

 11:20
Sec. of Senate